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In re Application of :
BELANSKY et al :
U.S. Application No.: 10/509,555 :
PCT No.: PCT/GB03/01449 :
Int. Filing Date: 03 April 2003 :
Priority Date: 03 April 2002 : **DECISION**
Attorney Docket No.: 102792-008/11006P1 :
For: CLEANING APPARATUS AND :
METHOD FOR USING THE SAME :
:

This decision is in response to applicants' petition Under 37 CFR 1.47(a) filed on 28 April 2006.

BACKGROUND

On 29 September 2004, applicant submitted papers to enter the national stage of PCT/GB03/01449. These papers included an unsigned declaration.

On 30 March 2005, the DO/EO/US mailed a Notification of Acceptance of Application Under 35 U.S.C. 371 and 1.495 (Form PCT/DO/EO/903) and filing receipt indicating that the date of receipt of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements and date of completion of all 35 U.S.C. 371 requirements is 29 September 2004.

On 18 April 2005, a request for a corrected filing receipt was mailed.

On 03 August 2005, a request for a Notice of Missing Parts was filed.

On 28 April 2006, applicants filed the subject petition which was accompanied by, *inter alia*, a declaration signed by twelve of the thirteen named inventors and documentary evidence of correspondence sent to the nonsigning inventor with postal receipts.

DISCUSSION

A review of the subject application shows that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was not submitted on 29 September 2004. The declaration filed with the national stage papers was not signed.

Accordingly, the Form PCT/DO/EO/903 and filing receipt mailed 30 March 2005 were sent in error, and hereby VACATED.

In the papers filed 28 April 2006, applicant claims that one of the thirteen named inventors, Lamson Nguyen, refuses to sign the declaration and has filed the subject petition under 37 CFR 1.47(a).

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventors on their behalf and on behalf of the nonsigning joint inventors.

The \$200.00 petition fee has been paid.

Regarding item (2), the 37 CFR 1.47(a) applicant included a list of the actions taken to obtain the signature of the nonsigning inventor in the petition. A letter requesting signature of the declaration was mailed to the last known address of Mr. Nguyen on 31 March 2006 along with a copy of the above-captioned patent application. A Federal Express tracking report indicates that the documents were delivered and received by M. Mai on 03 April 2006. Applicant was requested to return the executed documents as soon as possible. Another letter and copy of the subject application was mailed to the last known address of Mr. Nguyen on 07 April 2006 again requesting that the documents be returned as soon as possible. These documents were delivered on 10 April 2006 and received by G. Nguyen.

Applicants claim that no response has yet been received from the nonsigning inventor and concludes that Mr. Nguyen "had ample opportunity to review these aforesaid documents and notwithstanding these opportunities, continues to refuse to join in the above-captioned application."

Applicants' burden in showing that an inventor refuses to cooperate is explained in section 409.03(d) of the MPEP which states, in part:

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted.

A review of the evidence submitted shows that the conduct of Mr. Nguyen

constitutes a refusal to cooperate.

As such, item (2) of 37 CFR 1.47(a) is satisfied.

The last known address of Mr. Lamson Nguyen is listed as:

278 Maple Avenue
Somerset, NJ 08873

Regarding item (4), the 37 CFR 1.47(a) applicant submitted declaration signed by twelve of the thirteen joint inventors on behalf of the nonsigning joint inventor. The residence, citizenship and mailing information for all inventors are listed. This declaration complies with 37 CFR 1.497(a) and (b).

Item (4) of 37 CFR 1.47(a) is also satisfied.

All requirements of 37 CFR 1.47(a) are complete.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **GRANTED**.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 03 April 2003 under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 28 April 2006.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record and will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

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